

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADRIAN REYNARD SMITH,
Plaintiff,
v.
SAN FRANCISCO SHERIFF
DEPARTMENT,
Defendant.

Case No. [18-cv-05089-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the
3 elements of a cause of action will not do. . . . Factual allegations must be enough to
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal
8 conclusions can provide the framework of a complaint, they must be supported by factual
9 allegations. When there are well-pleaded factual allegations, a court should assume their
10 veracity and then determine whether they plausibly give rise to an entitlement to relief."
11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **LEGAL CLAIMS**

17 Plaintiff states that he was falsely arrested and his *Miranda* rights were violated.
18 For relief plaintiff contends that his civil rights were violated, he is suffering from money
19 loss and the confinement is cruel punishment.

20 "Federal law opens two main avenues to relief on complaints related to
21 imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the
22 Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges
23 to the lawfulness of confinement or to particulars affecting its duration are the province of
24 habeas corpus." *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting *Muhammad v.*
25 *Close*, 540 U.S. 749, 750 (2004)). "An inmate's challenge to the circumstances of his
26 confinement, however, may be brought under § 1983." *Id.*

27 Habeas is the "exclusive remedy" for the prisoner who seeks "immediate or
28 speedier release" from confinement. *Skinner v. Switzer*, 131 S. Ct. 1289, 1293 (2011)

(quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)); see *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). “Where the prisoner’s claim would not ‘necessarily spell speedier release,’ however, suit may be brought under § 1983.” *Skinner*, 131 S. Ct. at 1293 (quoting *Wilkinson*, 544 U.S. at 82). As a consequence, challenges to prison conditions traditionally have been cognizable only via § 1983, while challenges implicating the fact or duration of confinement must be brought through a habeas petition. *Docken v. Chase*, 393 F.3d 1024, 1026 (9th Cir. 2004).

In this case it is not clear the relief plaintiff seeks or his specific claims. To the extent that he seeks to be released from custody, he may file a federal habeas petition after he has been convicted and he has exhausted his claims. If he seeks relief based on his confinement he must present specific claims. To the extent plaintiff seeks money damages resulting from his arrest, plaintiff is informed that in order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. *Id.* at 487. The complaint is dismissed with leave to amend to address the deficiencies noted above.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed no later than **October 22, 2018**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he

1 wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may
2 not incorporate material from the original complaint by reference. Failure to file an
3 amended complaint may result in dismissal of this case.

4 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
5 court informed of any change of address by filing a separate paper with the clerk headed
6 "Notice of Change of Address," and must comply with the court's orders in a timely
7 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
8 pursuant to Federal Rule of Civil Procedure 41(b).

9 **IT IS SO ORDERED.**

10 Dated: September 21, 2018



PHYLLIS J. HAMILTON
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ADRIAN REYNARD SMITH,
4 Plaintiff,

5 v.

6 SAN FRANCISCO SHERIFF
7 DEPARTMENT,
8 Defendant.

Case No. [18-cv-05089-PJH](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on September 21, 2018, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Adrian Reynard Smith ID: #567942
18 San Francisco County Jail
19 County Jail #4
850 Bryant Street
San Francisco, CA 94103

20
21 Dated: September 21, 2018
22

23 Susan Y. Soong
24 Clerk, United States District Court

25 By: Kelly Collins
26 Kelly Collins, Deputy Clerk to the
27 Honorable PHYLLIS J. HAMILTON
28